MEMORANDUM of UNDERSTANDING
Between the
U.S. ENVIRONMENTAL PROTECTION AGENCY - REGION 10
and
U.S. DEPARTMENT OF AGRICULTURE - RURAL DEVELOPMENT - IDAHO STATE OFFICE

Sole Source Aquifers
State of Idaho

INTRODUCTION:

The purpose of this memorandum is to continue the understanding between the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Agriculture - Rural Development (RD) Idaho State Office in order to protect EPA- designated Sole Source Aquifers (SSAs) in the State of Idaho. This Memorandum of Understanding (MOU) is the third MOU that has been signed between these two agencies. The last MOU was signed in 1989.

This revised MOU was developed by EPA and RD in recognition of the need to streamline the process of identifying, reviewing, modifying, and approving proposed projects that request federal financial assistance and are to be located over SSAs. While the SSA Protection Program is only one tool for use by the State, local communities, and the private sector for protecting and managing ground water resources, the purpose of this MOU is to help ensure that: (1) development projects sponsored by the federal government will not have a significant adverse impact on human health and the environment; (2) public health and ground water concerns are communicated to federal and state agencies and other organizations that propose projects for federal financial assistance; and (3) development projects sponsored by the federal government serve as models for the private sector.

This partnership approach will capitalize on the continuing efforts by local and state economic planning and development agencies and/or other organizations subject to the National Environmental Policy Act (NEPA).

GOALS:

The goals of this MOU are: (1) to ensure that each project receiving federal financial assistance is designed to prevent the addition of contaminants into the SSA at quantities that may create a significant hazard to public health, interfere with the public welfare, or otherwise contaminate the aquifer to a level which would require additional treatment by a public water system in order to meet the National Primary Drinking Water Regulations; and (2) to formalize the process EPA and RD will use to coordinate the review of projects requesting federal financial assistance.

OBJECTIVES:

1. Develop an agreement for implementing the Sole Source Aquifer Protection Program under Section 1424(e) of the Safe Drinking Water Act.

2. Protect all EPA-designated SSAs in the State of Idaho by establishing project specific performance measures that are agreed upon by both EPA and RD.

3. Establish a new working agreement between the two agencies which will streamline the process for identifying, reviewing, modifying, and approving federal financially assisted projects.

4. Encourage increased communication, cooperation, and coordination of ground water protection issues in SSAs in Idaho through community ground water protection programs, local health departments/districts, and state and federal governmental agencies .

3. AUTHORITIES:

EPA: The Sole Source Aquifer Protection Program is authorized under Section 1424(e) of the federal Safe Drinking Water Act. This provision allows EPA to designate an aquifer a "sole or principal" source of drinking water in an area where the aquifer supplies 50% or more of the drinking water, and where contamination of the aquifer could create a significant hazard to public health. A Sole Source Aquifer designation can be initiated by a petition submitted to EPA from any interested party, such as a public water purveyor, local health department, or environmental group. Following a designation, projects proposed over the aquifer that request federal financial assistance are subject to EPA review. EPA can negotiate modifications to improve a project or even deny funds to a project which poses a significant risk to public health by contamination of the SSA.

RD: RD provides federal funding for essential public facilities and services such as water and sewer systems, housing, health clinics, and emergency service facilities. RD promotes economic development by supporting loans to businesses through banks and other financial lenders. RD also offers technical assistance and information to help agricultural and other cooperatives get started and improve the effectiveness of their member services. Finally, RD provides technical assistance to help communities undertake community programs.

SSA REVIEW ASSUMPTIONS:

The process for EPA's review of federal projects is based on the following assumptions:

1. EPA, RD, and other local and/or state economic development and planning agencies and/or other organizations will work together cooperatively to implement the SSA Protection Program;

2. Projects located over EPA-designated SSAs and the Stream Flow

Source Areas of the designated aquifers will be reviewed by RD, or in specific cases mentioned below, by EPA, for impacts to ground water quality;

3. RD will review projects to ensure that they meet the performance measures. If RD determines that a project meets the performance measures, the funding process may proceed without EPA's review or approval. However, EPA will continue to review all projects on Indian Lands;

4. If the project cannot meet the agreed upon performance measures and/or if RD cannot make a determination about the project's specific impact to ground water quality, then RD may consult with and/or refer the project to EPA for review and approval. RD may (1) request technical and informational assistance and/or (2) request EPA to conduct an independent review of the proposed project for impacts to ground water quality. EPA will provide RD with a determination of risk within thirty (30) days of receiving the request for assistance.

5. EPA will be responsible for oversight and evaluation of the SSA project review process, serve as the point of contact for other federal, state, and local agencies, continue to be the focal point for citizen input, and will review individual projects at the Agency's discretion;

6. Any project that has been categorically excluded from environmental review, under the National Environmental Policy Act (NEPA) or by a policy of a Federal agency, will remain excluded from EPA SSA review, unless a project is deemed to pose a potential hazard to public health. In such a case, EPA will provide RD with written documentation demonstrating such a potential hazard and an explanation of why the project should be subject to an SSA review. For example, as a matter of policy, EPA does not review federally funded projects that involve the purchase of single family homes, but may request RD to review the development of a proposed subdivision which will be comprised of a number of individual single family

housing units that collectively could pose a threat to ground water quality;

7. For all projects that are not referred to EPA, RD will provide EPA with an annual report on the number and type of projects that were approved; and

8. If RD receives a citizen petition (with substantiating data) regarding the review at any time during the review process or any time before RD has approved the project, RD should immediately notify EPA that an independent review may necessary. EPA will then review the information submitted and provide RD with a risk determination within thirty (30) days of receiving such petition.

5. SSA REVIEW PROCESS:

EPA and RD will approve all projects requesting federal financial assistance which meet the following performance measures:

1. Storm Water

   Any project that may generate, increase, collect, or dispose of storm and surface water run off from impervious surfaces, e.g., parking lots and roof tops, must use the State of Idaho Catalog of Storm Water Best Management Practices in the design of all storm water treatment and disposal systems. In addition, the use of shallow injection wells, e.g., dry wells, french drains, or a drainfield system, must be avoided if at all possible. In cases where no other treatment and disposal system is possible, the project designer must: (1) notify and register the shallow injection well(s) with the Idaho Department of Water Resources (IDWR) Underground Injection Control (UIC) Program; (2) ensure that the shallow injection well will not dispose of any fluids that fail to meet the State of Idaho Ground Water Quality Standards; and (3) pay any applicable registration fees to the State of Idaho.

2. Sanitary Waste

Whenever feasible, sanitary waste must be sent to a Publicly Owned Treatment Works (POTW). In cases where connections to the POTW cannot be made, onsite sewage disposal systems (OSS) can be utilized: (1) if the appropriate Idaho Health District is notified and a permit is issued; and (2) the project proponent registers the OSS with IDWR as well as the Health District and pays any applicable State registration fees.

In addition, facilities that do not have connections to a POTW will not be allowed to connect garage bay and other floor/shop drains to an OSS. The use of Best Management Practices allows for an alternative to garage bay and other drains, for example, using a sloped garage bay and holding tanks.

3. Potable Water

Whenever feasible, connections to a community water supply must be made. In cases where connections to a community water system cannot be made, a private well may be used to supply potable water if: (1) the appropriate Idaho Health District is notified; (2) water is tested for contaminants, such as bacteria and nitrate, and the levels of detected contamination are within the levels set by the National Drinking Water Regulations; and (3) all applicable pollution prevention techniques are used to protect the private well from contamination.

4. Underground Storage Tanks

All underground storage tank (UST) systems must meet the federal UST performance standards as specified in Title 40 of the Code of Federal Regulations (CFR), Part 280, Subpart B. These performance standards cover proper tank and pipe design and construction, spill and

overfill equipment operating specifications, and proper installation procedures. In addition, all UST owners/operators must: (1) register with the IDEQ by completing the Notification for Underground Storage Tanks Form; (2) comply with Subpart D of the Federal UST Regulations, which require that leak detection procedures be performed once petroleum products or other regulated hazardous substances are added to the tanks, (3) obtain an approved financial responsibility mechanism, in accordance with Subpart H of the Federal UST regulations, prior to putting the UST system into service. This mechanism will ensure that clean-up funds will be made available if/when needed to mitigate ground and drinking water or soil contamination.

In the event that UST(s) require permanent closure, all UST owner/operators must: (1) submit a closure notification form to IDEQ at least thirty (30) days prior to beginning tank closure; (2) check with the local fire department thirty (30) days prior to tank closure regarding a closure permit for any tank out of service for more than one year; (3) follow closure procedures as outlined in EPA regulations (40 CFR 280.71); (4) determine whether the tank and/or the tank sludge is hazardous waste and consider proper disposal options; (5) perform a site assessment; (6) immediately notify the local fire department and IDEQ within twenty-four (24) hours of discovery of soil or ground water contamination; (7) maintain records that are capable of demonstrating compliance with the site assessment requirements under the federal UST regulations, and (8) give careful consideration to the reuse of USTs that have been used to store petroleum or hazardous chemicals. For more information regarding State specific UST or leaking underground storage tank (LUST) closure requirements, the Regional IDEQ office should be contacted.

5. Community Water System Improvement

Communities requesting federal financial assistance for new or improved water systems must participate in the State of Idaho Source Water Assessment and Protection Program. Since all community water systems will be receiving a complete Source Water Assessment by IDEQ, the community water system must incorporate the use of relevant non-regulatory and/or regulatory approaches to protect its drinking water supply in order to receive federal funds for water system improvement projects.

DEFINITIONS:

Aquifer: Geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or a spring. Aquifer in this Memorandum refers to the Spokane Valley Rathdrum Prairie, Lewiston Basin, and Eastern Snake River Plain aquifers.

Commitment of federal financial assistance: A written agreement entered into by a department, agency, or instrumentality of the Federal Government to provide financial assistance as defined under "Federal financial assistance" below. Renewal of a commitment which the issuing agency determines has lapsed shall not constitute a new commitment unless the Regional Administrator determines that the project's impact on the aquifer has not been previously reviewed under Section 1424(e) of the Safe Drinking Water Act. The determination of a Federal agency that a certain written agreement constitutes a commitment shall be conclusive with respect to the existence of such a commitment.

Federal financial assistance: Any financial benefits provided directly as aid to a project by a department, agency, or instrumentality of the Federal government in any form, including contracts, grants, and loan guarantees. Actions or programs carried out by the Federal government itself (for example, dredging performed by the Army Corps of Engineers) do not

involve Federal financial assistance. Actions performed for the Federal government by contractors (for example, construction of roads on Federal lands by a contractor under the supervision of the Bureau of Land Management) should be distinguished from the contracts entered into specifically for the purpose of providing financial assistance, and will not be considered programs or actions receiving Federal financial assistance. Federal financial assistance is limited to benefits earmarked for a specific program or action and directly awarded to the program or action. Indirect assistance, e.g., in the form of a loan to a developer by a lending institution which in turn receives Federal assistance not specifically related to the project in question is not Federal financial assistance under Section 1424(e). When in doubt, EPA will consult with EPA Region 10, Office of Regional Counsel.

Impervious area: An impermeable surface, such as a parking lot or rooftop, that is covered with materials, such as concrete, asphalt, shingles, or tile, which prevent the infiltration of water into the soil.

Maximum Contaminant Level (MCL): The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. MCLs are listed in the National Primary Drinking Water Regulations (40 CFR 141).

Significant hazard to public health: Any level of contamination which causes or may cause the aquifer to exceed any maximum contaminant level (MCL) set forth in the promulgated National Primary Drinking Water Regulations at any point where the water may be used for drinking purposes or which may otherwise adversely affect the health of persons, or which may require a public water system to install additional treatment to prevent such adverse effect.

Shallow Injection Well: Devices that are designed to emplace storm and surface water run off directly into the subsurface, also known as french drains, trench drains, dry wells, and sumps.

Sole Source Aquifer (SSA): An aquifer or aquifer system that supplies 50% or more of the drinking water for a given service area, with no reasonably available alternative sources should the aquifer become contaminated. Section 1424(e) of the Safe Drinking Water Act is the statutory authority for the SSA Protection Program.

Stream Flow Source Area: Recharge area of the designated Sole Source Aquifer.

Storm Water Best Management Practices (BMPs): Structural devices that temporarily store, treat, and dispose storm and surface water run off to remove pollutants, recharge ground water, and reduce flooding.

Underground Storage Tank (UST): Any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of regulated substances, with a volume (including the volume of underground pipes connected thereto) of ten (10) percent or more beneath the surface of the ground. Farm or residential tanks with a volume of 1100 gallons or less used for storing motor fuel for noncommercial purposes and tanks used for storing heating oil for consumptive use on the premises are exempt from the Federal UST rules and regulations.

CONTACT DIRECTORY:

1. **Storm Water and/or Shallow Injection Wells**:
   Idaho Department of Water Resources - Underground Injection Control (UIC) Program (Permitting and Registration)

2. **Onsite Sanitary Wastewater Treatment and Disposal**:
   Idaho Health Districts (Permitting) or Idaho Division of Environmental Quality - State Office (Technical Assistance) or Idaho Department of Water Resources - UIC Program (Technical Assistance)

3. **Private Wells**:
   Idaho Division of Environmental Quality - Regional Offices (Technical Assistance) and/or Idaho Association of Soil Conservation Districts - Home*A*Syst Project (Technical Assistance)

4. **Public Wells**:
   Idaho Division of Environmental Quality - State Office (Permitting)

5. **Underground Storage Tanks**:
   EPA - Idaho Operations Office (Registration)

6. **Leaking Underground Storage Tanks**:
   Idaho Division of Environmental Quality - Regional Offices

7. **State Source Water Assessment and Protection Program**:
   Idaho Division of Environmental Quality - State Office (Approvals) or Idaho Rural Water Association (Technical Assistance)

8. **Ground Water Protection on Indian Lands**:
   EPA - Seattle Regional Office - Sole Source Aquifer Protection Program (Approvals and/or Technical Assistance)

CONTACT TELEPHONE NUMBERS:

U.S. Environmental Protection Agency - Region 10
Seattle Regional Office: (206) 553-1200 or (800) 424-4372
Idaho Office: (206) 553-1200 or (800) 424-4372

Idaho Association of Conservation Districts
Home*A*Syst Project: (208) 338-4321

Idaho Department of Water Resources
State Office: (208) 327-7900

Idaho Division of Environmental Quality

State Office:	(208) 373-0502
Coeur d'Alene Regional Office:	(208) 769-1422
Lewiston Regional Office:	(208) 799-4370
Boise Regional Office:	(208) 373-0550
Twin Falls Regional Office:	(208) 736-2190
Pocatello Regional Office:	(208) 236-6160
Idaho Falls Regional Office:	(208) 528-2650

Idaho Rural Water Association

State Office:	(208) 743-6142

PRIMARY PROGRAM CONTACTS:

The following agency representatives will be responsible for maintaining communications as to procedures and activities of their respective agencies. The liaison officers are:

EPA:
Manager
Ground Water Protection Unit
U.S. Environmental Protection Agency
1200 Sixth Avenue, OW-137
Seattle, WA 98101
1-800-424-4372

RD: **(Idaho)**
State Environmental Coordinator
U.S. Department of Agriculture - Rural Development
9173 West Barnes, #A1
Boise, ID 83709-1555
(208) 378-5619

MOU AMENDMENT PROCEDURES:

This Memorandum of Understanding is subject to revision upon receiving a letter from a signatory agency to modify the conditions and/or terms understood by this MOU. Upon concurrence from the signatory agencies to modify the conditions and/or terms of this MOU, the subject letter will be recognized as an Addendum to this MOU.

SIGNATURES:

U. S. EPA - Region 10

for Chuck Clarke — 9-2-99

Chuck Clarke — **Date**
Regional Administrator

U.S.D.A - Rural Development - Idaho State Office

for Daniel N. Fraser — 8-27-99

Loren A. Nelson — **Date**
State Director

Version 7.0 - August 9, 1999